

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BLACK LIVES MATTER)	
SEATTLE-KING COUNTY, et al.,)	C20-00887-RAJ
)	SEATTLE, WASHINGTON
Plaintiffs,)	
)	July 31, 2020
v.)	
)	9:00 a.m.
CITY OF SEATTLE,)	
)	Status Hearing
Defendants.)	conducted by Zoom
)	video conferencing
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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For the Defendant: Robert Christie
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1 THE CLERK: Your Honor, we are here in the matter of
2 Black Lives Matter Seattle-King County, et al., vs. City of
3 Seattle. Cause No. C20-887-RAJ. If counsel could please
4 make your appearances for the record.

5 MR. PEREZ: David Perez, Perkins Coie, representing
6 the plaintiffs.

7 MS. TACK-HOOPER: Molly Tack-Hooper, also for the
8 plaintiffs.

9 MR. CHANG: Bob Chang, Korematsu Center, also for the
10 plaintiffs.

11 MR. CHRISTIE: Good morning, Your Honor. Bob
12 Christie on behalf of the City of Seattle.

13 MR. MILLER: Good morning. Tom Miller on behalf of
14 the City of Seattle.

15 THE COURT: All right. Good morning to all of you.
16 This matter was originally scheduled for a hearing on the
17 City's motion to show cause why this court should not hold
18 the defendants in contempt for violation of the court's
19 preliminary injunction order that was entered on June 17th of
20 this year.

21 In support of that motion, plaintiffs filed a host of
22 declarations with video evidence. In conforming with the
23 preliminary injunction, the plaintiffs set the hearing on the
24 motion for today. That's the reason for the short
25 turnaround.

1 On Wednesday evening, the defendants filed their response,
2 accompanied with several declarations. In addition to
3 contending the defendants have not violated the court's
4 order, the defendants have also raised due-process concerns
5 and request additional time to substantively respond to the
6 allegations.

7 Now, I've outlined in my order that was issued yesterday
8 the legal justification for delaying today's proceedings. We
9 will not be addressing whether we need to have an evidentiary
10 hearing; that issue has already been decided by the court.
11 As indicated in the order issued, the court advised the
12 parties that we will not be arguing the motion, but rather
13 discussing the scope and parameters for that type of hearing.

14 Now, I'll start with a couple indicators from this court,
15 as to matters that do not appear to be in dispute. First,
16 the proceeding now before this court is being conducted with
17 the plaintiffs seeking to hold the defendants in civil, not
18 criminal contempt. Second, the standard to be utilized by
19 this court as to whether a contempt of this court's order has
20 occurred is by clear and convincing evidence. Now, I suspect
21 the members of the viewing public or listening public may be
22 confused and wonder why the court needs to set a hearing on a
23 contempt claim, why can't the court just make a finding based
24 on the videos and declarations filed?

25 This is a situation of indirect contempt that depends upon

1 evidence presented in the court, and the court thereafter
2 deciding if the evidence is sufficient to support such a
3 finding.

4 The court then has to decide, after both parties have had
5 an opportunity to present their evidence, make legal
6 argument, and it's improper for the court to make a
7 determination without an opportunity for the defendants to
8 respond.

9 Now, in light of these circumstances before this court, I
10 have directed the parties to be prepared to discuss several
11 matters, to frame the matter and format for the hearing.

12 Now, as noted in my order, a civil contempt proceeding may
13 not ordinarily be tried on the basis of affidavits. But if
14 the parties are willing to so stipulate, we can proceed in
15 that fashion. That would mean it would give the defendants a
16 deadline to file their additional and/or counter affidavits
17 and evidence; the plaintiffs may respond, if necessary; and
18 then allow the parties to make arguments to the court based
19 upon the written submissions.

20 Now, we have to deal with the realities of the situation
21 we find ourselves in with the pandemic. This approach would
22 be most efficient, particularly in light of the challenges of
23 COVID-19, and the fact that this court is closed. This court
24 has recently reissued a new modified order by our Chief
25 Judge, in a General Order, closing court proceedings until

1 September 8th. This court will not be open until after that
2 time period. And, again, that date is uncertain.

3 Normally I would begin with the plaintiffs. However, it
4 appears they are ready to proceed, and have filed an
5 abundance of evidence for the court's consideration. So I
6 wish to hear from the defendants first.

7 Now, before you begin, I wish to advise I will not
8 outright dismiss the plaintiffs' motion as you've requested.
9 They have presented a dearth of evidence via affidavits and
10 videos. In opposition, you have filed declarations, some
11 video, and still shots that represent that you have not had a
12 chance to substantively respond to the claims and evaluate
13 the force that was used through a proper Fourth Amendment
14 analysis. What you have filed only addresses some of the
15 issues raised. In order to give you a chance to respond, as
16 noted, I need your input on the questions I've identified.

17 So let's start first, what's your position with respect to
18 conducting the hearing on the basis of affidavits or
19 declarations in lieu of a formal hearing?

20 MR. CHRISTIE: Good morning, Your Honor. This is Bob
21 Christie.

22 THE COURT: Good morning.

23 MR. CHRISTIE: We are not amenable to conducting it
24 solely on affidavits. We think it's vital that there be live
25 testimony.

1 THE COURT: And when you say "live testimony,"
2 counsel, what do you contemplate by way of presentation of
3 evidence?

4 MR. CHRISTIE: I contemplate presentation of
5 body-worn video and an explanation by witnesses that have
6 knowledge of that video.

7 THE COURT: Counsel, you've represented in your
8 materials that you have, I believe the number is 1,394,
9 different body-cam videos. Do you plan or do you even
10 believe that's realistic to attempt to present that volume of
11 evidence to this court in a reasonable time period?

12 MR. CHRISTIE: No, we don't, Your Honor. What we
13 would anticipate is that we set a hearing date, we work
14 backwards from that, with a deadline for disclosure by
15 Mr. Perez, of the people that he plans to present as
16 witnesses and what video he plans to present. That would
17 help define the scope of our response. And we would focus
18 our response on those items that are relevant to what he is
19 presenting.

20 So what we would -- and I'm prepared to speak to all the
21 topics that the court has outlined, if you want me to do that
22 now, or I'll do it at the end.

23 THE COURT: Well, I may interrupt you as we go along,
24 counsel. Plaintiffs right now, I believe, have identified
25 20-plus affidavits and declarations, not to mention the

1 variety of videos that they've presented. Is it your plan to
2 counter each of those by way of body-cam evidence?

3 MR. CHRISTIE: As best we can, Your Honor. It's
4 imprecise, for sure. And we're actively collecting and
5 evaluating that evidence. But if the scope of the
6 plaintiffs' evidence is the declarations that have currently
7 been filed and the video that's currently been identified,
8 that would be good to know. And if that is the case, then
9 that is the -- that would define the scope of our response.
10 We would expect to have testimony consistent with the
11 declaration of John Brooks that was filed that talks overall
12 about how the scene unfolded.

13 But in terms of focus, since this is about claims of
14 identifiable specific individuals who claim there was a use
15 of force, either OC spray, blast balls, or perhaps blue nose,
16 that are quite specific. And the measuring is whether that
17 complies with your order. Our intent would be to respond as
18 best as possible to those specific uses of force.

19 THE COURT: Counsel, do you believe it's necessary to
20 call an abundance of witnesses, or are you willing to accept
21 some form of declaration and affidavit that could be
22 countered by declaration and affidavit? In other words, a
23 hybrid-type approach. So as opposed to having live testimony
24 which would warrant the plaintiffs utilizing all 24, for
25 example, declarations that they've presented, and then you

1 countering each of those. Do you believe that's necessary
2 and sufficient to be able to balance that with some affidavit
3 and some live testimony?

4 MR. CHRISTIE: That's an excellent question, Your
5 Honor. I have candidly not discussed that with our full
6 team. I would appreciate an opportunity to do that. And we
7 could respond quite quickly to the court on that.

8 THE COURT: Now, when you say "consult with your
9 team," are you asking the court to take a brief recess during
10 the course of this hearing, then reconnect to this court?

11 MR. CHRISTIE: Well, that would be one thing that we
12 could do, we could very briefly go offline and I could jump
13 online with my team and provide an answer to that probably
14 within about five minutes at the most.

15 THE COURT: All right. We'll take that time at the
16 appropriate time, counsel. And the court believes there's
17 urgency, counsel, to address these matters. The protests
18 have been ongoing for a significant period of time, and the
19 court is concerned about the issues that have been raised.
20 In that fashion, the court has a desire to move in an
21 expeditious fashion to be able to tell the plaintiffs if
22 they've made their case, and to tell you if you've
23 sufficiently defended against the claim of contempt. That's
24 the reason the court is pushing in the manner that it is
25 today. Is that understood, counsel?

1 MR. CHRISTIE: It is, Your Honor.

2 THE COURT: So let's continue with the question the
3 court presented to you, counsel.

4 MR. CHRISTIE: So, looking at that and being
5 sensitive to what the court just stated, as we had indicated
6 in our original response, we thought a timeframe of 60 days
7 would be appropriate to set a hearing. So if we were to look
8 at a calendar right now, and we sketched out some dates, if
9 the court was to pick October 5th as the hearing date,
10 working backwards from that, if the plaintiffs were fully
11 disclosed with their evidence by August 7th, within 30 days
12 of that, September 4th, we would identify our witnesses and
13 all of the evidence that we might present, and then
14 anticipating a hearing subsequent to that.

15 THE COURT: Counsel, I have no idea what the Black
16 Lives Movement plan is for continued demonstrations. The
17 court is concerned that every weekend that we delay and every
18 day that we delay, there's uncertainty in terms of the
19 outcome of this proceeding. It would be helpful to have
20 guidance, clear guidance from this court, so that you and
21 plaintiffs have a clear understanding of what is permitted
22 and what is not permitted, or what needs to be modified, or
23 if the order in place now is sufficient.

24 So 60 days seems, counsel, to be a little bit unrealistic
25 in light of the circumstances that are before this court, and

1 the imminent nature of the court's concern.

2 So when you have your offline conversation with your
3 co-counsel, take that into consideration.

4 MR. CHRISTIE: Thank you, Your Honor.

5 THE COURT: All right. Please continue, counsel.

6 MR. CHRISTIE: Well, so looking at the scope -- and,
7 again, I think if the scope is defined by the 20-some
8 individuals that have filed declarations, I would anticipate
9 -- and this is a rough estimate -- 10 to 15 witnesses on our
10 side that would respond to that. That's a body of about,
11 let's just pick a number, 40 witnesses. Anticipating how
12 many of those could realistically testify in a day, if it's
13 six to eight that might testify in a day, I think that
14 defines the length of this hearing as something in the six to
15 eight day timeframe.

16 THE COURT: Now, counsel, you represented to the
17 court a total of 40 witnesses based upon what the plaintiffs
18 have provided, as well as the defense anticipated witnesses?

19 MR. CHRISTIE: I was estimating 10 to 15 on our side,
20 in addition to theirs. So I think, if my math is correct,
21 that would bring us up to about 40 on the high side.

22 THE COURT: Counsel, you know, one of the court's
23 concerns in any type of litigation is cumulative evidence.
24 And is what you're representing to the court that you want to
25 have 10 to 15 different officers essentially present to the

1 court that this was a riotous situation and continue to
2 repeat the testimony of the previous officer? That's not an
3 efficient use of time.

4 MR. CHRISTIE: We would not plan to do that, Your
5 Honor. We would plan, to the extent possible, to have
6 witnesses address the specific uses of force that are the
7 basis for the claim, that there's been an isolated -- or in
8 this case, multiple, individual violations of the terms of
9 your order. We would not want to duplicate testimony in any
10 way.

11 THE COURT: Please continue, counsel.

12 MR. CHRISTIE: So I think I've touched on all of
13 them, except the preferred technology to conduct the hearing.
14 We're anticipating that it's likely to be this format for
15 that. I believe that with this format, while there are some
16 inefficiencies in it, it can be done as expeditiously as
17 possible, as long as we have screen-sharing control such that
18 we could present our videos through a screen share with the
19 court, have the witness discuss them on an ongoing basis, if
20 we could control that screen share. Of course, all the
21 documents or all of the video evidence would have been
22 previously disclosed, so everybody would know exactly what
23 we're looking at. But that's the format that we would
24 anticipate presenting this in, Your Honor.

25 THE COURT: Counsel, one of your justifications for

1 the delay includes your desire to obtain pertinent
2 documentation. And that would include, again using your
3 representation, use-of-force reports and relevant BWV. It
4 also suggests that the use-of-force investigations are
5 subject to multiple levels of review, including an
6 investigation by OPA.

7 Now, counsel, it's this court's experience, and I think
8 that you'd have to agree, that those type of investigations
9 are complicated, have multiple layers of review, and that's
10 not even counting a Loudermill hearing, and also a review of
11 the Chief of Police.

12 So, counsel, if that's what you're contemplating, that
13 extensive of an investigation, that may be fine for an
14 internal investigation for discipline against your officers,
15 but are you suggesting to the court that it's that type of
16 investigation that needs to be completed before you're
17 prepared and ready to deal with this hearing?

18 MR. CHRISTIE: No, Your Honor. We recognize that
19 those processes exist and will be followed. But to the
20 maximum extent possible in the timeframe that I have
21 requested, it's our desire to get to the heart of the matter.
22 And there's some logistics, and there's some issues relative
23 to all of those other processes that we're going to have to
24 deal with. This is a different circumstance. But we are
25 going to use the best that we can in this process to compile

1 and present substantive evidence on these events.

2 THE COURT: And, counsel, you'd agree that you
3 already have an identification by the plaintiffs of the
4 nature and scope of their arguments to this court. You have
5 the specific individuals and you also have the video evidence
6 that they've identified. As a matter of fact, some of the
7 declarations you provided have still screenshots of the
8 videos provided by the plaintiffs. So shouldn't that
9 considerably narrow the amount of time necessary for you to
10 prepare for this type of hearing?

11 MR. CHRISTIE: Your Honor, if we know right now --
12 and perhaps we do, and Mr. Perez can confirm -- that the
13 scope of the evidence on his side has been defined in his
14 motion and in the declarations that have been filed, and if
15 that is the case, then we wouldn't need to wait until
16 August 7th to know that disclosure. We begin -- that helps
17 us. We're rapidly compiling the body-worn video and trying
18 to get to that, that's relevant and responsive.

19 So it may well be that we could do that before the
20 September 4th deadline. But there is quite a volume of
21 material. And the way those individual body-worn cameras are
22 linked to this event, requires a fair amount of investigation
23 to try to find the exact opposite screen video of what has
24 been presented. So it is a bit of a challenge. We're
25 working on it actively now.

1 THE COURT: Okay.

2 And, counsel, would you once again give the court your
3 proposed timeline, not that I'm going to adopt it, but I just
4 want to hear what you're proposing again.

5 MR. CHRISTIE: Yes, Your Honor. Again, the timeline
6 would be setting a hearing date that would likely be six to
7 eight days, starting October 5th.

8 Backing up from that, if the plaintiffs were to disclose
9 their material by no later than August 7th, our disclosures
10 would be 30 days, or four weeks from that, actually,
11 September 4th. And then what I guess I would need some
12 guidance from the court is whether or not there's any
13 anticipation of any active discovery process in that interim
14 period.

15 THE COURT: Well, counsel, this is a contempt
16 proceeding. I don't believe that contempt rules contemplate
17 discovery.

18 MR. CHRISTIE: I agree.

19 THE COURT: Plaintiffs have already identified the
20 specifics of the basis for their allegation. Again, this is
21 a contempt proceeding. I recognize case authority talks
22 about a trial, which is an evidentiary hearing, which is what
23 *Peterson* refers to. And that's what the court contemplates
24 allowing for your defense and for the plaintiffs' prosecution
25 of their claims.

1 MR. CHRISTIE: Thank you, Your Honor. That would be
2 my understanding, too. I appreciate the clarification.

3 THE COURT: Okay. All right.

4 Let me hear from, I believe it's Mr. Perez. Are you going
5 to be speaking on behalf of the plaintiffs?

6 MR. PEREZ: Yes, Your Honor.

7 THE COURT: All right. Mr. Perez, let me hear from
8 you. Good morning, again.

9 MR. PEREZ: Thank you, Your Honor. And thanks for
10 making the time. How about I just go down the list, and
11 interrupt me as I go down.

12 Starting with the date. We agree with Your Honor, 60 days
13 is impractical. There are three protests scheduled for this
14 weekend. And so we would be strongly opposed to a 60-day
15 timeline, because that just may very well lead to more
16 complications and misunderstandings. We would push for a
17 hearing within the next 14 days, or at most 30 days. But
18 60 days is impractical.

19 We're probably closer -- the parties are probably closer
20 in length, although there's a lot of efficiencies we can
21 capture if we did a hybrid approach. And in a civil-contempt
22 proceeding, there is an awful lot of authority to suggest a
23 court can and courts often do rely on affidavits. Unless and
24 until the contempt sanctions begin to approach a criminal
25 sanction, the due process for a full-fledged trial on the

1 merits is not required, in a civil-contempt proceeding.

2 And note that the sanction we're asking for is relatively
3 modest. So I do think we should strongly consider a hybrid
4 approach or even one that relies more on affidavits than live
5 testimony. And we have live testimony for targeted
6 questions. But a two-to-three day -- two to three days per
7 side makes sense to us, you know. So that's probably
8 anywhere from five to seven days total.

9 THE COURT: Counsel, let me clarify. Did you say it
10 does or does not make sense?

11 MR. PEREZ: I think two to three days per side makes
12 sense. But we could streamline that, should we adopt a
13 hybrid approach, which would be more efficient. But I think
14 on the top end, it would be five to seven days. We could
15 reduce that should the parties be able to agree on
16 introducing some affidavits.

17 THE COURT: Let me ask you a question, counsel, and
18 perhaps I should have asked counsel for the defendants as
19 well. Have the parties attempted to meet and confer to craft
20 a timeline, as well as a proposed format for the proceeding?
21 The court's always desirous of the parties crafting their own
22 resolution, their timelines, so that the court does not have
23 to be imposing a deadline that neither party wishes to adhere
24 to or desires to have an alternative consideration. So,
25 Mr. Perez, have you met with defense counsel?

1 MR. PEREZ: We haven't had an opportunity yet to meet
2 and confer. It's just too quick of a turnaround. But
3 actually, that's a good idea. And we had those in our notes,
4 in our e-mails back and forth, that we should meet and confer
5 on, for instance, the video format, on the amount of
6 testimony each side would require. I think it makes sense
7 after this hearing, if there are loose ends, for us to meet
8 and confer and tie those loose ends. I guess we're going to
9 be at an impasse on the timeline, because 60 days is just way
10 too long.

11 We could easily iron out, with the court's approval, the
12 technology format. And I think we may even be able to iron
13 out the *Peterson* question, which is whether we can proceed on
14 a hybrid approach. Although I understand from Mr. Christie
15 he'll be speaking and getting us clarification on that with
16 his client later in the hearing. So I think we'll be close
17 on several of these issues. But the timeline is going to be
18 the big one.

19 To bookmark this for a second. We have submitted
20 declarations, Your Honor. I don't think if we go to an
21 evidentiary hearing, we should be limited just to those
22 declarations. I like the notion of, if we have a hearing in
23 two weeks, we disclose any additional witnesses within a
24 certain amount of time, and the City can disclose their
25 witnesses soon thereafter. But if the City is going to be

1 cherry-picking videos, I do think it makes sense for that
2 body, or that universe of videos, either be made available to
3 plaintiffs, or the City makes some representation that if
4 they come across a video that, in fact, does show force or is
5 relevant, or does show one of our witnesses and one of our
6 plaintiffs, they can't simply withhold that and then only
7 show Your Honor the cherry-picked videos out of 1,300 that
8 suggest or seem to support their case.

9 From the affidavits we submitted, there is a strong
10 likelihood, Your Honor, that many of those videos will
11 support our case. And should the City withhold those videos
12 in advance of a contempt hearing, we would suggest to you,
13 Your Honor, that would be improper.

14 THE COURT: Okay.

15 And, counsel, I think you represented that on the outside,
16 a 30-day postponement. So I want to clarify your position.
17 On the outside, a 30-day date set for the hearing and then a
18 five-day hearing, five-to-six-day hearing, correct?

19 MR. PEREZ: Yes, Your Honor. We think that's
20 reasonable. Thirty days would be -- we would be very
21 concerned with that timeline, given that there are three
22 protests this weekend. But, yes.

23 You know, if we were to work backwards, if we had a
24 hearing the week of the 24th of August --

25 THE COURT: Let me get my calendar, counsel.

1 MR. PEREZ: Sure. And that is a Monday. If we
2 started right away on Monday the 24th, that is, in fact, one,
3 two, three, four, that's the fifth week since the incident.
4 And I'll represent to Your Honor that we had phone calls with
5 the City on the 25th as the incident was occurring and
6 unfolding. So they were already gathering information as of
7 the 25th. So that would be basically the fifth week since
8 the incident.

9 We could disclose -- we could meet and confer and work
10 with counsel to create a schedule based on that, disclosures,
11 witnesses, documents, and present that to Your Honor,
12 contemplating the week of the 24th. We can have a chess
13 clock, which is usually the most efficient, of two days each
14 side, with half a day each side argument. So that's five
15 days total. And to the extent neither side can fit their
16 evidence within two days, we're just going to have to be
17 sufficient with affidavits. And that's just what we're going
18 to have to do, given the confines of litigation and time
19 constraints we're under.

20 But I think that would be the Cadillac version of due
21 process from the City. That's a lot of due process,
22 particularly here, where we're not seeking a sanction that's
23 so serious that it requires anything more than that. Again,
24 we would suggest it requires much less.

25 THE COURT: All right. Anything further from the

1 plaintiffs' perspective?

2 MR. PEREZ: Not unless you have any additional
3 questions. I think that's it.

4 THE COURT: Let me hear from counsel for the
5 defendants.

6 MR. CHRISTIE: Thank you, Your Honor. I have a jury
7 trial scheduled to start August 24th in front of Judge
8 Michael Scott. We're planning to try that in the Bellevue
9 Maidenbower Center. That case is locked and loaded to go.
10 And he's done everything humanly possible to make sure that
11 actually goes. So if we could start after Labor Day, the
12 8th, that would really be the earliest I think that is
13 realistic. I'm trying to be sensitive to the court's desire
14 to get this going.

15 What I'm a bit concerned about, in the response I heard
16 from Mr. Perez, is a broadening of the scope. We need a
17 deadline when the scope is defined by whoever he's going to
18 present. We are amenable to a hybrid fashion. I was able to
19 confer by text with my team. So I think that could create
20 some efficiencies. And I guess it would just be up to the
21 parties and how they present their evidence, and the court
22 will define how long we have on each side to do that. I do
23 like the chess-clock approach, it's fair.

24 And the idea that we would find video that would support
25 him and hide that, we would never do that. The court rules

1 would prohibit us from doing that. We would find relevant
2 video, relevant to the event. It is what it is. That's the
3 point of the time to gather this evidence.

4 So, if we were to start, at the earliest -- I'm trying to
5 be sensitive to what the court is saying -- the Tuesday after
6 Labor Day, and proceed accordingly with the amount of time
7 the court is willing to give on this, I think, in fairness, I
8 think three days would be fair. And if it's shorter, it's
9 shorter. It wouldn't be any attempt to run the clock out, it
10 would be to try to get the evidence in and present it
11 efficiently.

12 THE COURT: Counsel, if the parties are going to
13 engage in the utilization of the hybrid approach suggested by
14 this court, the court does not see the need for a lengthy
15 process, in other words, seven or eight days. The court will
16 certainly put on a clock, that's what the court typically
17 does for all its civil proceedings, so that the parties are
18 efficient in the use of their time. When I say efficient use
19 of the time, I want to emphasize efficient use of the time.
20 Because when that clock expires, you sit down. Your time has
21 expired at that point in time. That, I've found from my
22 experience, generates an enormous amount of passion and
23 desire to have your witnesses testify, and testify
24 efficiently. And that clock time includes the direct and
25 cross examination that you use with the witnesses.

So I'd say, at a maximum, this hearing would last -- a five-day proceeding, two and a half days per side, and nothing more.

The court is going to need to confer with my in-court deputy. So what I'm going to do is I'm going to put you on mute, I'm going to contact my in-court deputy, and then we'll discuss available dates. The court had one date in mind, a lot shorter than 60 days, I'll tell you that right now. And then I'll come back online. So if the parties will just remain on the line.

(Recess.)

THE COURT: All right, counsel. Are the parties back on the line? All right.

MR. CHRISTIE: I'm good, Your Honor. Thank you.

THE COURT: Mr. Christie? Okay.

Counsel, here's the schedule. One, I'm going to direct that the parties do meet and confer after the court gives you the specific deadlines that the court is going to impose. Now, again, the court's undertaking an aggressive approach to try to get this matter resolved; Mr. Perez has already announced perhaps that they're going to have perhaps three protests this weekend. And I have no idea, and he hasn't represented what that looks like for the next few weeks down the road.

But I'm going to set the following: The court is going to

1 set the date for the initial disclosures of August 5th.
2 That's next Wednesday. And, counsel for the plaintiff, I
3 believe you are prepared to proceed today. So you should
4 know the witnesses and affidavits that you will utilize for
5 purposes of the trial or hearing. The court has already set
6 a five-day time period for the trial. The initial
7 disclosures will be August 5th. The responding disclosures
8 will be August 8th, that's the following Wednesday.

9 MR. PEREZ: August 12th, do you mean.

10 THE COURT: August 12th, excuse me. It will be
11 August 12th. The court will require that the joint witnesses
12 and exhibit lists be filed by August 18th. And all the
13 deadlines I'm imposing, counsel, the deadlines will be known
14 on those days. I'm trying to maximize the amount of time the
15 court has to review and the maximum amount of time the
16 parties have to review each party's disclosure. The court is
17 going to require the submission of exhibits and any other
18 documents that you want the court to consider. And that
19 deadline for filing is going to be August 21st. That will
20 give the court the time to process whatever you're going to
21 submit to the court.

22 I will also let you know that obviously I'm working from
23 home and my mainframe computer, our browser doesn't allow me
24 to access Twitter. So many of the videos that were on
25 Twitter, the court had to revert to its iPad. I don't have

1 the highest skill set in technology, but I'm doing the best
2 that I can. And so I can see and saw most of the videos that
3 were on the Twitter browser format, except for just two. So,
4 please be sensitive to that when you're making your
5 submissions to the court. I'll get to them, but it makes it
6 far easier if you're using Twitter -- and that appears to be
7 the format for many if not most of the videos that were
8 provided to the court.

9 The court asks that the submission of exhibits be by
10 Dropbox. And I trust that all of you have the technical
11 capability that you and my in-court deputy can communicate
12 and know how to make that transmission.

13 Also, if you need training, and I suspect you may need
14 training to work with our Zoom system, because that's the
15 format that we're going to use, that you undertake whatever
16 is necessary to be familiar with the court process and
17 procedures. There will be no in-court opportunity. The
18 in-court will be by Zoom and only zoom. We're going to use
19 the exact same format as today. It will be an open
20 proceeding for audio participation for any members of the
21 public that wish to listen and review. But as far as the
22 parties, it will be just by Zoom.

23 If you wish to expand the participation by way of having
24 client representation, you can do that, just let the in-court
25 deputy know, so that we can make sure that those individuals

1 will have the proper access line to be able to participate
2 and observe.

3 Again, that's your call. But you need to make that
4 disclosure in advance of the court proceeding, so that we can
5 accommodate client representation. I'm not requiring client
6 representation. I'm not asking for the Mayor and the Chief
7 of Police to appear, and I'm certainly not asking for all the
8 named plaintiffs to appear. But if they wish to appear by
9 Zoom to see, they'll have the opportunity to do that. But as
10 you may recall, when we had the temporary restraining order
11 hearing, that was a burden upon the court because members of
12 the public were doing everything from ordering food, to
13 having friendly conversations with each other, talking about
14 the weather, and everything else. That's not acceptable to
15 the court and it's not acceptable and shouldn't be acceptable
16 to the parties.

17 This court expects this proceeding to be conducted just as
18 if we were in open court. And the court wants all of you to
19 be respected fully, without disruption, and a full
20 opportunity to present your case and positions. And I'd
21 expect nothing less from the parties or the participants.

22 The court has set the hearing and is setting the hearing
23 for August 26th, that's a Wednesday. And with the desire of
24 the parties to have an opportunity to have meaningful
25 presentation of their evidence, we'll start the hearing on

1 the 26th. I'm going to have to move a number of things
2 around on my calendar to accommodate. So that will mean the
3 26th, 27th and 28th we will be in trial, and we will complete
4 -- and the 31st, which is the following Monday. And then
5 we'll finish on the 1st. And then we'll go into closing
6 remarks on that day.

7 That should give finality. And then that will hopefully
8 give the court an opportunity to get an order out in an
9 expeditious fashion to give you direction on what the court's
10 position is going to be on what you file.

11 Counsel, I hope that gives you enough guidance and
12 direction in the court's expectations. Now, if you have any
13 questions or need clarification, this is your opportunity.
14 Starting first with counsel for the plaintiff. Mr. Perez?

15 MR. PEREZ: One thing we discussed, and just I failed
16 to ask, Your Honor, our request would be if the defendants
17 are going to be relying on the body-cam videos, we think it's
18 the most efficient for them to turn that over. We can
19 stipulate to a protective order. But both sides should have
20 access to those videos. And I understand and appreciate
21 Mr. Christie's representation that he'll just hand over
22 relevant videos as they come across them. But we might have
23 a different interpretation of what's relevant. So it just
24 makes sense, given that all the videos are about this
25 incident, they should just be turned over. We shouldn't have

1 a fight over that.

2 THE COURT: When you say "all the videos," you mean
3 the videos defendants plan on utilizing; correct, counsel?

4 MR. PEREZ: Well, they're only going to utilize the
5 videos that are helpful to them. We're thinking there are
6 videos that won't be helpful for them that they won't utilize
7 that we want to utilize. How do we get access to those
8 videos.

9 THE COURT: Counsel, I think the number is 1,394 --
10 my number may be off, but I think that's a proper number --
11 are you asking the City to give to you that many body-cam
12 videos?

13 MR. PEREZ: We would ask for at least a portion of
14 those or all of them, yes. We don't think that would be too
15 heavy of a lift, because some of those would be short videos
16 and we can view them very quickly by increasing the speed of
17 the video. And we have a review team ready to go to review
18 some of those videos.

19 If they are already going to be reviewing them on their
20 end for relevance, it strikes me as proper to have us review
21 them for relevance on our end as well.

22 THE COURT: All right. Any other points of
23 clarification from you, Mr. Perez?

24 MR. PEREZ: I think that was it.

25 One other -- I'm sorry -- one other clarification is, and

1 we could possibly meet and confer about this, too, but Your
2 Honor has set the date for the hearing on the contempt. One
3 thing we might be able to separate from the contempt, and I
4 don't want to argue this since Your Honor doesn't want
5 argument, is the clarifications to the PI. That is something
6 that may be separated from contempt, doesn't necessarily
7 require additional due process. But I just wanted to flag
8 that, given there's going to be protests between now and the
9 26th.

10 THE COURT: Repeat the beginning part, counsel. I
11 didn't hear a little of it.

12 MR. PEREZ: As Your Honor recalls, we asked for two
13 things in our motion. We asked for a clarification to the
14 PI, and then we asked for a finding of contempt and
15 sanctions. And the sanctions were the attorneys' fees. We
16 do believe that those two requests, the clarification to the
17 PI, can be separated from the contempt, and between now and
18 the 26th, that clarification on the briefs can be decided and
19 a clarification might avoid additional, shall we say,
20 disruptions between now and the 26th.

21 THE COURT: And, counsel, why don't you narrow the
22 specifics of the things that you believe are proposed to be
23 clarified. And I have your proposed order.

24 MR. PEREZ: It would be everything in our proposed
25 order, everything other than the portion that finds them in

1 contempt and issues attorneys' fees. It would be the
2 additional clarifications, for example, Your Honor, that you
3 cannot target legal observers, you cannot target medics, you
4 cannot target peaceful protestors, certain other
5 clarifications about throwing projectiles indiscriminately
6 into the crowd.

7 Our evidence suggests that rather than use teargas, what
8 they did was they substitute, for teargas, they substituted
9 pepper spray and began using that indiscriminately. So these
10 are clarifications that are consistent with your order. You
11 don't need to wait for a contempt hearing to issue them. And
12 the papers themselves justify those clarifications. We're
13 just suggesting you can separate those.

14 THE COURT: All right. Let me hear from counsel for
15 the defendants.

16 MR. CHRISTIE: Thank you, Your Honor. Respectfully,
17 the last request is inappropriate. It's functionally a
18 request for a new preliminary injunction without trying to
19 meet the TR0 standard. It is a significant change from the
20 court's present order, and hasn't been the subject of
21 briefing, or hearing, or any attempt to present proof to the
22 level that the plaintiff must prove in order to seek that new
23 relief.

24 If we're talking about what we started this conversation
25 with, this discussion about 24, 26 events, with us responding

1 to those events, then I think that's what we -- that's what
2 the court framed up in terms of a hearing.

3 So we are strongly opposed to you, I guess, evaluating, or
4 taking under advisement, or separating off what we think is a
5 completely inappropriate request, guised as clarification.

6 And the second point, I may have to tell Judge Scott I was
7 ordered to a hearing in your court. I do have a trial that I
8 mentioned to the court, and I just want to make sure that's
9 not lost on this, starting August 24th, a jury trial in King
10 County Superior Court before Michael Scott. And if the court
11 orders me to be in court on the 26th, I'll tell Judge Scott
12 that you've ordered me to be in court on the 26th.

13 THE COURT: Well, you can let Judge Scott know from
14 the court, with all due respect, that when I was serving as
15 Superior Court Judge, I can't tell you how many times a
16 federal judge overruled a date that I had set for a
17 proceeding or a trial. Again, I emphasize with all due
18 respect. But, counsel, I don't know the nature of the case
19 that you have before Judge Scott, but the nature of the
20 proceedings that are before this court have citywide impact.
21 And this court needs to address that. And I'm quite certain
22 that -- reasonable minds could differ, but I think Judge
23 Scott will agree with the court's concern.

24 MR. CHRISTIE: I'm confident he will, Your Honor. I
25 just wanted to make that point clear, so I can make it clear

1 that I pointed it out to the court, and I've got enough
2 direction on that. Thank you.

3 Finally, with respect to the scope of the videos produced,
4 we think it is unreasonable to ask that we produce a body of
5 1,400 body-worn videos. Plaintiff has put forward their
6 evidence. Our goal is to identify any video that relates to
7 the events that have been put forth, and any video that
8 relates to the events put forth would be part of what would
9 be made available for counsel to review.

10 THE COURT: All right. This is what the court is
11 going to do -- did you need to respond, Mr. Perez?

12 MR. PEREZ: No.

13 THE COURT: This is what the court is going to do,
14 counsel:

15 As the court read through your motions for contempt, and
16 though you characterize it as a motion for clarification, the
17 court saw it as a modification of the court's prior order.
18 This court was quite precise and specific in terms of the
19 prohibition. And that was based upon the pleading papers
20 that the parties submitted to this court. And I granted
21 relief based upon what was submitted to this court.

22 Subsequent to the issuance of that order, the last
23 demonstration that resulted in the proceeding now, had a
24 significant variation in terms of what the facts were before
25 the court at the time of application for the TRO. In light

1 of that, counsel, I think it would be unfair and
2 inappropriate, even though you characterize it as a
3 clarification, this would appear to be a modification, and
4 that would require an additional or separate TRO. And the
5 court doesn't believe it's appropriate at this point in time.

6 Counsel, you'll certainly have your day and opportunity to
7 present the facts to justify all the relief that you're
8 seeking. But I don't believe it's appropriate for the court
9 to do that at this point in time without following the
10 necessary protocols for a TRO or injunctive relief. So to
11 that extent, your oral request for modification is going to
12 be denied.

13 Second, counsel, as to the videos. The court is not going
14 to order the defense to produce 1,394 videos. I understand
15 you may have a significant team out there that are
16 powerhouses ready to go through that, counsel. But I don't
17 think, in light of the circumstances, that that's appropriate
18 or necessary.

19 The court is not going to require the City to produce that
20 volume. But what I'm going to do, counsel, I'm going to give
21 the parties the opportunity to try and craft your own
22 resolution of what plaintiffs' counsel needs and what defense
23 counsel plans on producing. So, counsel, if you believe that
24 there are connecting or linking videos that are supportive or
25 necessary, confer with counsel. If for some reason, counsel,

1 you can't agree on the scope -- and I'm telling you now I'm
2 not going to order 1,394 videos to be produced, because I
3 want to have the parties focus and concentrate on what you're
4 going to present to the court, as opposed to fighting over
5 the breadth and extent of your discovery.

6 So I will give you the freedom, counsel, of meeting and
7 conferring. And I'll even give you a time right now to come
8 back to the court. And then we can further discuss whatever
9 you can't agree upon by way of discovery or disclosures.
10 Would that be acceptable to you, Mr. Perez?

11 MR. PEREZ: Absolutely. Thank you. I think that
12 strikes the right balance.

13 THE COURT: Mr. Christie, would that be an acceptable
14 proposal?

15 MR. CHRISTIE: Yes, Your Honor.

16 THE COURT: Counsel, what I'm going to do is I'm
17 going to give you a date and time right now, so you don't
18 have to seek permission from the court, and you know with
19 certainty when you can come back to the court. What I will
20 require, however, whatever issues you can't agree upon, I
21 want a joint submission to be provided to this court, a brief
22 joint submission. And I'll give you the date and time now,
23 so that you can know when to file a submission, and also what
24 date and time for the hearing.

25 Since the plaintiffs' initial disclosures are the 5th,

1 when do you propose, counsel, that you'd like to have a
2 meeting with the court? Let me hear from both sides.

3 MR. PEREZ: Well, if we're disclosing our witnesses
4 on the 5th and theirs on the 12th, I think it makes sense,
5 sometime very shortly after the 12th, for us to discuss what
6 videos or additional videos we would need. So probably by
7 the 14th? I know that's a quick turnaround after the 12th.
8 But I think we can make it work.

9 THE COURT: Counsel for the defense?

10 MR. CHRISTIE: I think we can make that work, Your
11 Honor.

12 THE COURT: All right, then. Counsel, I have our
13 DREAM calendar that afternoon of the 14th. Is there any
14 reason why we can't have this discussion on the afternoon of
15 the 13th or the morning of the 14th? Do you have some place
16 you need to be other than home on those dates?

17 MR. PEREZ: That works for us.

18 MR. CHRISTIE: The morning of the 14th would be our
19 preference.

20 THE COURT: All right. Then we'll set it for the
21 morning of the 14th. It appears acceptable to both parties.
22 And we'll set that at 9:00 a.m. on the 14th.

23 Now, again, counsel, if you agree, contact the court and
24 you can strike. The court wants your written submissions,
25 whatever this joint submission is going to be, by noon on

1 the 13th. Can you do that, counsel?

2 MR. PEREZ: We'll make it work.

3 THE COURT: Counsel, Mr. Christie?

4 MR. CHRISTIE: Yes, we will make that work, Your
5 Honor.

6 THE COURT: All right. Then that's the deadline for
7 that.

8 Counsel, I think the court has addressed all of the issues
9 presented to this court. I've given you deadlines. Counsel,
10 we have enormous issues that are presently before this court.
11 The issue is about the opportunity for peaceful
12 demonstrations. And the issue is also about law enforcement
13 engaging in proper procedures to protect peaceful protestors,
14 as well as engaging in their duties as law enforcement
15 officers. This matter is complicated enough without further
16 additions to stirring the pot and causing additional issues
17 of further claims of contempt. I would encourage counsel to
18 work with your clients.

19 Counsel for the plaintiff, Mr. Perez, you have an
20 organization that is dedicated to try and make change in
21 society. Counsel for the police, you have a
22 responsibility -- and the City -- you have a responsibility
23 to confer with your clients to make sure that they are
24 complying with the directives of this court. I read in the
25 pleadings how the incident commander read specifically from

1 the court's order. But, again, I want to emphasize, it's not
2 going to make progress unless both parties talk to your
3 clients, meet with your clients, and tell them we're trying
4 to engage in resolution of the issues before this court.

5 With that, counsel, we will be in recess.

6 MR. CHRISTIE: Thank you, Your Honor.

7 (Adjourned.)

8
9 C E R T I F I C A T E

10
11
12 I certify that the foregoing is a correct transcript from
13 the record of proceedings in the above-entitled matter.

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15
16
17 */s/ Debbie Zurn*

18 DEBBIE ZURN
19 COURT REPORTER
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